IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4143 of 2006()

CRA.125/2005 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
CC.567/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

.....

REVN. PETITIONER: APPELLANT/ACCUSED

M.M.MOHAMMED KIAZE, S/O. M.M.MOIDEEN,
MACHINGAL HOUSE, JANATHA ROAD,
NORTH PALARIVATTOM, KOCHI.

BY ADV. SRI.NIDHI BALACHANDRAN

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

---

1. P.A.BASHEER, S/O. PADIKKAPARAMBIL ABU,
PUTHUSSERY DESOM, CHEMMANTHITTA VILLAGE,
TALAPPILLY TALUK, THRISSUR.

2. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

Crl. R.P.No.4143 of 2006

Dated this the 6th day of December, 2006

ORDER

Petitioner is the accused in C.C. No. 567 of 2000 on the file of the court of Judicial Magistrate of First Class, Kunnamkulam and was found guilty for the offence under Section 138 of the Negotiable Instruments Act and he was sentenced to pay compensation of Rs.55,000/- under Section 357(3) of the Code of Criminal Procedure to the complainant and in default of payment of compensation, to undergo simple imprisonment for three months. This was as per the judgment dated 22nd February, 2003. The petitioner challenged the conviction and sentence in Crl.A.No.168 of 2003 on the file of the court of III Additional Sessions Judge (Adhoc) Fast Track Court No.I, Thrissur. The appellate court confirmed the conviction. However, the appellate court found that the trial court was not right in not awarding substantive sentence and that compensation could not be awarded under Section 357(3) of the Code of Criminal Procedure without there being a substantive sentence. On this

finding the case was remitted back to the trial court for passing appropriate sentence in accordance with law.

2. After remand, the trial court passed a judgment dated 8th February, 2005 awarding a sentence of simple imprisonment for a period of one month. The trial court also directed the petitioner to pay a sum of Rs.55,000/- as compensation to the complainant under Section 357(3) of the Code of Criminal Procedure and in default of payment of compensation to undergo simple imprisonment for three months. The petitioner filed Crl.A.No.125 of 2005 on the file of the court of the III Additional Sessions Judge (Adhoc) Fast Track Court No.I, Thrissur, challenging the sentence imposed as per the judgment dated 8th Feb, 2005. The appellate court dismissed the appeal holding that no appeal would lie under Section 374 of the Code of Criminal Procedure against the sentence alone. The appellate court held that the petitioner was found guilty and convicted for the offence under Section 138 of the Negotiable Instruments Act by the trial court as per the judgment dated 22nd February, 2003 and that finding was confirmed by the appellate court in the

judgment dated 7.4.2004. The conviction having become final, the appellate court took the view that the petitioner is not entitled to file an appeal challenging the sentence alone. The judgment of the appellate court is challenged in this revision.

3. In Gopinathan V. Krishnan Ayyappan (1989 (2) KLT 856) it was held that "A right of appeal is not a natural or inherent right and hence it must be referable to express provisions in a statute." It was held that an appeal against the sentence alone is not maintainable. However, it was held in State of Kerala Vs. Achutha Panicker (1975 KLT 703) that an appeal can be treated as a revision in a proper case and in that case, the accused was directed to file an application to convert the appeal into the revision before the Sessions Court.

4. In the present case, the appeal before the Sessions court was filed within time. It was dismissed on 29th August, 2006. Free copy was issued on 17.10.2006. This revision was filed on 24.11.2006. If the period of the pendency of Crl.A.No. 125 of 2005 before the court below is excluded, this revision could be said to have been filed within a period of 90 days,

challenging the judgment of the trial court. In the peculiar facts and circumstances of the case, I am of the view that this revision can be treated as a revision against the judgment dated 8th February, 2005 imposing sentence on the petitioner and that the period during which Crl.A.No.125/2005 was pending could be excluded in computing the period of limitation. If so, this revision would be well within the period of limitation.

5. Now the petitioner is sentenced to undergo simple imprisonment for a period of one month. It is submitted by the learned counsel for the petitioner that the petitioner is prepared to deposit the compensation amount of Rs.55,000/- and that sentence of imprisonment may be reduced to imprisonment till the rising of the court, in the light of the decision in Anilkumar Vs. Shummy (2002 (3) KLT 852). I am inclined to accept this submission. Since the conviction is not being interfered with, I am of the view that it is not necessary to issue notice to the first respondent/complainant, particularly when compensation is directed to be paid to him.

In the result, this Crl.R.P. is allowed in part in the following

manner:

(i) the sentence imposed on the petitioner as per the judgment dated 8.2.2005 in C.C.No. 567 of 2000 is modified and reduced to imprisonment till the rising of the court. The direction to pay compensation of Rs.55,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure and in default to undergo simple imprisonment for three months, is confirmed. However, taking into account the facts and circumstances of the case and the submission made by the learned counsel for the petitioner, I am inclined to grant two months' time to the petitioner to pay the compensation amount.

(ii) the default sentence in respect of the compensation amount shall be kept in abeyance for a period of two months.

A copy of this judgment shall be sent to the first respondent at the expenses of the petitioner, before issuing certified copy of the judgment to the petitioner.

K.T.SANKARAN,
JUDGE

csl

K.T.SANKARAN, J

Crl. R.P. No. 4143 of 2006

Dated this the 27th day of November, 2006

ORDER

Not admitted.

The learned counsel for the petitioner submits that the petitioner is prepared to pay the compensation amount of Rs.55,000/- and that the sentence of imprisonment may be reduced till the rising of the court. It is seen from the judgment of the appellate court that the appeal was dismissed as not maintainable. The trial court had found the petitioner guilty under Section 138 of the Negotiable Instruments Act and was

sentenced to pay compensation under Section 357(3) of the Code of Criminal procedure. The appellate court confirmed the conviction and remitted the matter to the trial court with a direction to award substantive sentence. The present appeal from which this revision arises was one challenging the judgment passed by the trial court afterwards. The appellate court took the view that the appeal is not maintainable since it relates to sentence. The learned counsel for the petitioner prays for further time to argue the matter elaborately on the question of law. Post on 4.12.2006. Meanwhile, execution of the sentence shall be kept in abeyance.

K.T.SANKARAN,
JUDGE

csl